RECENT CASES.

ADVERSE POSSESSION — WHAT CONSTITUTES — EXCLUSIVE POSSESSION. — The defendant had cultivated as his own, for over twenty years, a strip of land belonging to the plaintiff, beneath the plaintiff's eaves. The plaintiff sued the defendant for building a walk on this strip. *Held*, that the defendant has acquired the fee in the strip by adverse possession, subject to an easement in the plaintiff to let his eaves hang over it. *Rooney* v. *Petry*, 17 Ont. Wk. Rep. 83.

To gain title by adverse possession the adverse possessor must have exclusive possession: he must be in and the true owner must be out. *Bellis* v. *Bellis*, 122 Mass. 414. If the true owner is making such use of his land as at least to reserve in himself an easement over it, and that use is, as here, the one which a true owner would naturally make of that land, it seems strange to say that another can, during all that period of use, be in exclusive possession. To build a shed with overhanging eaves has been regarded as such a taking of the land underneath the eaves as will found a claim by prior possession to that land against one who later put it under cultivation. *Thacker* v. *Guardenier*, 7 Met. (Mass.) 484. In Wisconsin it has been squarely decided that overhanging eaves give the owner such possession of the land beneath them as to prevent exclusive possession in another. *Lins* v. *Seefeld*, 126 Wis. 610. *Contra*, *Randall* v. *Sanderson*, 111 Mass. 114. The Wisconsin view seems the fairer and more logical one.

ADVERSE POSSESSION — WHAT CONSTITUTES — WHETHER CONSCIOUS HOSTILITY IS ESSENTIAL. — The plaintiff claimed and occupied land for the statutory period up to what he believed to be the line mentioned in his deed. By mistake his claim went beyond the true line. *Held*, that since the plaintiff had no intention of claiming land which did not belong to him, he acquired no title by adverse possession. *Clinchfield Coal Co.* v. *Viers*, 68 S. E. 976 (Va.).

In general the statutes of limitations merely bar the owner's remedy and are silent as to the nature of the holding which suffices to accomplish it. From the analogy to disseisin, however, the courts early established the rule that the stranger's possession must be under claim of title. But neither this analogy nor the words of the statute justify the further requirement that such claim must be consciously hostile to the true owner. It is settled that when the defendant's claim to the entire tract which he has occupied rests upon adverse possession, conscious hostility is not necessary. *Sumner* v. *Stevens*, 6 Met. (Mass.) 337; *Nowlin* v. *Reynolds*, 25 Gratt. (Va.) 137. But where the defendant has good paper title to a part of the land occupied, and title by adverse possession is relied upon merely to extend the boundaries of his claim, many cases hold that he must occupy the additional strip in conscious hostility to the true owner. *Grube* v. *Wells*, 34 Ia. 148; *McCabe* v. *Bruere*, 153 Mo. 1. This doctrine seems, however, to be without logical or historical foundation, and puts a premium on bad faith. The weight of authority is against it. *French* v. *Pearce*, 8 Conn. 439; *Daily* v. *Boudreau*, 231 Ill. 228; *Mielke* v. *Dodge*, 135 Wis. 388.

AGENCY — PRINCIPAL'S LIABILITY TO THIRD PERSONS IN TORT — LIABILITY OF CHARITABLE ORGANIZATION. — The plaintiff, while engaged in making repairs on the premises of the Salvation Army, was injured by the negligence of the agents of the charity. *Held*, that the charity is liable. *Hordern* v. *Salvation Army*, 92 N. E. 626 (N. Y.).

American authorities are practically unanimous in granting some exemption to charities. But charities in England would seem to be liable for the torts of their agents. The early reasoning for exemption from liability was that trust

funds should not be diverted to paying damages. *Parks* v. *Northwestern University*, 218 Ill. 381. This has been repudiated in England. *Mersey Docks Trustees* v. *Gibbs*, L. R. 1 H. L. 93; *Gilbert* v. *Trinity House*, 17 Q. B. D. 795. And it is not logically tenable in those American jurisdictions which allow recovery where there has been negligence in selecting incompetent servants. See *Plant System Relief & Hospital Department* v. *Dickerson*, 118 Ga. 647. A second view, that in the case of charities none of the reasons of public policy underlying the rule of *respondeat superior* are applicable, is supported by reasoning which is not unassailable. *Hearns* v. *Waterbury Hospital*, 66 Conn. 98. A third theory, illustrated by the principal case, and now the established doctrine in New York, that a recipient of charity cannot invoke the rule because he has assumed the risk, but that an outsider may, is of comparatively recent growth. *Powers* v. *Massachusetts Homœopathic Hospital*, 101 Fed. 896; *ibid.*, 109 Fed. 294; *Bruce* v. *Central M. E. Church*, 147 Mich. 230; *Wallace* v. *Casey Co.*, 132 N. Y. App. Div. 35. The reasons against such a theory seem as strong as those against the fellow-servant doctrine. Moreover it establishes as a presumption of law what is at best a doubtful question of fact.

AGENCY — UNDISCLOSED PRINCIPAL'S RIGHTS AND LIABILITIES WITH RESPECT TO THIRD PERSONS — VIOLATION OF INSTRUCTIONS. — The plaintiff sold whisky to the manager of the defendants' hotel, dealing with the manager as owner. The defendants had instructed the manager to buy whisky from another firm exclusively. On discovering that the defendants were the real principals, suit was brought against them for the price of the whisky. *Held*, that the plaintiffs can recover. *Kinahan & Co., Ltd.* v. *Parry*, [1910] 2 K. B. 389.

For a discussion of the principles involved, see 23 HARV. L REV. 599.

CARRIERS — BAGGAGE — EXCLUSION FROM STREET CAR FOR CARRYING ARTICLE NOT INTENDED FOR PERSONAL USE. — The plaintiff attempted to board the defendant's car while carrying five cents' worth of ice, which he was taking to a sick man. There was a regulation excluding "bulky and dangerous articles" from the cars, but the jury found that the ice was carefully wrapped and not leaking. The plaintiff was, however, excluded, for which this action was brought. *Held*, that the court cannot say as a matter of law that the ice was not personal baggage. *McIntosh* v. *Augusta & Aiken R. Co.*, 69 S. E. 159 (S. C.).

Articles carried by a passenger for the use of another person are not baggage. *Metz* v. *California Southern R. Co.*, 85 Cal. 329. And this is a question of law. *Connolly* v. *Warren*, 106 Mass. 146. The case thus seems wrong on the ground of its decision. If, however, a company does by usage permit passengers to carry small packages of merchandise, a man may not be excluded for so doing. *Runyan* v. *Central R. Co. of New Jersey*, 65 N. J. L. 228. And it would seem that, in the case of street cars, a court might well judicially recognize the existence of such a usage, so general as to have become a part of the carrier's undertaking, in the absence of an express regulation to the contrary.

CARRIERS — DUTY TO ACCEPT AND CARRY PASSENGERS — RIGHT TO COMPEL CAR TO RETURN TO DESIGNATED STOPPING PLACE. — The plaintiff signalled the defendant's car at one of its regular stops, but the car ran by seventy-five yards, and the motorman refused to bring it back to the stop. The plaintiff refused to walk to the car, though allowed time to do so, and brought this action for the damages suffered by being left behind. *Held*, that he may recover. *Christian* v. *Augusta & Aiken R. Co.*, 69 S. E. 17 (S. C.).

It has been held that a regulation of an electric railway company not to return to take up a passenger may, under circumstances stronger indeed than those in the principal case, be unreasonable. *Jackson Electric Railway, Light,*